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8 **IN THE UNITED STATES DISTRICT COURT**  
9  
**FOR THE DISTRICT OF ARIZONA**

10 Austin Flake and Logan Flake,  
11 Plaintiffs,  
12 vs.  
13 Joseph Michael Arpaio, et al.,  
14 Defendants.

15  
16 No. CV 15-01132-PHX-NVW

17  
18 **PLAINTIFFS' MOTION**  
19 **REGARDING DEFENDANTS' NON-**  
20 **PRODUCTION OF DOCUMENTS**

21  
22 For the very first time, during the trial cross-examination of former MCAO  
23 Prosecutor Shawn Steinberg on December 14, 2017, Plaintiffs learned that (1) MCSO  
24 Detective Marie Trombi had created a “large chart” spanning several feet in length  
25 regarding the criminal charges ultimately filed against Austin Flake and Logan Brown, and  
26 (2) Ms. Steinberg had created her own “graph” reflecting the extent of electrical usage at  
27 Logan Brown’s parent’s home for (all or part of) June 2014 based on records the MCSO  
28 subpoenaed from the Salt River Project.

29  
30 Neither of these documents were produced or otherwise disclosed in pretrial  
31 discovery, although Plaintiffs’ discovery requests clearly requested such documents. See  
32 attached Exhibits A-D.

33  
34 The Court accordingly ordered the parties to “cooperate” regarding locating the  
35 “missing” documents (assuming that they have not been destroyed) and explaining why  
36 they were *not* produced by Defendants in the ordinary course of pretrial discovery.

1       In attempting to cooperate with Defendants' counsel regarding the missing  
 2 documents, Plaintiffs' counsel repeatedly asked Defendants' lead counsel, Jeffrey Leonard,  
 3 to answer the following questions:

- 4             • When did Defendants' counsel first learn of the possible  
 5               existence of the missing documents?
- 6             • Did Defendants' counsel withhold any documents based  
 7               on any purported privilege?

8       See attached Exhibit E. Notwithstanding the obvious importance of these two simple  
 9       questions, Defendants' counsel ignored the questions and refused to provide the requested  
 10      information to Plaintiffs.

11       Of course, the question of when Defendants' counsel first learned of the possible  
 12      existence of the missing documents is a critical fact in ascertaining whether or not  
 13      Defendants' failure to produce the documents was accidental or intentional. See generally  
 14      Haeger v. Goodyear Tire & Rubber Co., 906 F. Supp. 2d 938, 941 (D. Ariz. 2012).  
 15      Correspondingly, the question of whether or not Defendants withheld any documents based  
 16      upon a claim of privilege is relevant to ascertain the actual extent of Defendants' failure to  
 17      produce information directly relevant to this dispute. (Plaintiffs note in this regard that—  
 18      notwithstanding Plaintiffs' specific request—Defendants failed to identify any document  
 19      being withheld on grounds of a purported privilege. See Exhibit A, p. 3, ¶ 6, and Exhibit  
 20      B, pp. 2-3, ¶¶ 1-4.)

21       In addition, of course, the fact that Defendants failed to produce the chart and graph  
 22      raises the possibility that other documents were also *not* produced.

23       Plaintiffs' two simple questions only seek basic, preliminary information regarding  
 24      the missing documents and could be easily answered with little or no expense to  
 25      Defendants. Accordingly, under the circumstances, the Court should order Defendants to  
 26      answer the questions no later than January 5, 2018 when it reports to the Court on its efforts  
 27      to locate the missing documents.

1 Respectfully submitted this 2<sup>nd</sup> day of January 2018.

2 **MONTOYA, LUCERO & PASTOR, P.A.**

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9 I hereby certify that on January 2, 2018, I electronically transmitted the foregoing  
10 document to the Clerk of Court using the CM/ECF System for filing and transmittal of a  
Notice of Electronic Filing to the following registrant:

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